ELLIN DAVTYAN (238608)
General Counsel
KIRSTEN GALLER (227171)
Deputy General Counsel
JEAN KRASILNIKOFF (280450)
Assistant General Counsel
JENNIFER KO (324623)
Assistant General Counsel
OFFICE OF GENERAL COUNSEL
THE STATE BAR OF CALIFORNIA
180 Howard Street, San Francisco, CA 94105-1639
Tel: (415) 538-2444; Fax: (415) 538-2321
Email: jean.krasilnikoff@calbar.ca.gov

Attorneys for Defendants
Louisa Ayrapetyan; Natalie Leonard; Leah Wilson; Brandon Stallings; Ruben Duran; Hailyn Chen; Audrey Ching; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; Paul Kramer; Jean Krasilnikoff; Ellin Davtyan; George Cardona; Devan McFarland; Enrique Zuniga

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TODD R.G. HILL,

Plaintiff,

v.

THE BOARD OF DIRECTORS, OFFICERS AND AGENTS AND INDIVIDUALS OF THE PEOPLES COLLEGE OF LAW, et al.,

Defendants.

Case No.: 2:23-cv-01298-JLS (BFM)

STATE BAR DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT

DATE:	Under Submission
TIME:	N/A
COURTROOM:	780, 7th Floor
JUDGE:	Hon. Brianna Fuller Mircheff

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3
I. INTRODUCTION 5
II. ARGUMENT 5
A. Dismissal Is Appropriate Under Rule 8 5
B. The State Bar Defendants Are Entitled to Eleventh Amendment Immunity as to Any Claims Asserted Against Them in Their Official Capacities 6
C. The TAC Should Be Dismissed Under Rule 12(b)(6) 7
1. Plaintiff Fails to State Any Claim for Relief Against the State Bar Defendants 7
2. Plaintiff Misunderstands the Relevant Standard for a Motion to Dismiss 10
D. Dismissal Is Appropriate as to Members of the Board of Trustees and CBE and Remedies That May Not Be Awarded 11
E. The TAC Should Be Dismissed Without Leave to Amend 12
III. CONCLUSION 14
CERTIFICATE OF COMPLIANCE 15
DECLARATION OF SERVICE 16

TABLE OF AUTHORITIES

Cases

A.W. by & Through J.W. v. Coweta Cnty. Sch. Dist.,
110 F.4th 1309 (11th Cir. 2024) 12

AHCS-Mental Health & Wellness Inc. v. Los Angeles Cnty.,
2021 WL 6495038 (C.D. Cal. Dec. 16, 2021) 9

Ascon Properties, Inc. v. Mobil Oil Co.,
866 F.2d 1149 (9th Cir. 1989) 12

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 11

Gompper v. VISX, Inc.,
298 F.3d 893 (9th Cir. 2002) 12

Grant v. Los Angeles Cnty. Sheriff's Dep't,
2021 WL 769854 (C.D. Cal. Jan. 11, 2021) 6

Hearns v. San Bernardino Police Dep't,
530 F.3d 1124 (9th Cir. 2008) 5, 6

Jones v. Dollar Tree Stores, Inc.,
2021 WL 6496822 (C.D. Cal. Nov. 4, 2021) 8

Peter-Palican v. Gov't of Com. of N. Mariana Islands,
673 F.3d 1013 (9th Cir. 2012) 11

Pickern v. Pier 1 Imports (U.S.), Inc.,
457 F.3d 963 (9th Cir. 2006) 13

Porter v. Crow,
2020 WL 620284 (N.D. Okla. Feb. 10, 2020) 8

Quigley v. Garden Valley Fire Prot. Dist.,
7 Cal. 5th 798 (2019) 9

Robinson v. Alameda Cnty.,
875 F. Supp. 2d 1029 (N.D. Cal. 2012) 9

Walsh v. Nev. Dep't of Human Res.,
471 F.3d 1033 (9th Cir. 2006) 8

Webb v. Trader Joe's Co.,
999 F.3d 1196 (9th Cir. 2021) 10

Willis v. City of Carlsbad,
48 Cal. App. 5th 1104 (2020) 9

Rules

Fed. R. Civ. P. 8 ..... 5, 6, 13

I. INTRODUCTION

Plaintiff's Opposition to the State Bar Defendants' Motion to Dismiss suffers the same deficiencies as his Third Amended Complaint ("TAC"): it relies on conclusory, speculative allegations and a misunderstanding of the law as it relates to Plaintiff's claims and their bases for dismissal. The State Bar Defendants' Motion sets forth that Plaintiff's suit should be dismissed for a myriad of reasons, namely that any claims asserted against the individual defendants in their official capacities are barred by the State Bar's sovereign immunity; the TAC fails to comply with Rule 8; the TAC fails to state a claim against any State Bar Defendant; and the TAC names individuals who are not proper defendants to this action and seeks remedies that are not supported by any claim or that fail as a matter of law. *See generally* Mot. (Dkt. 172). Plaintiff fails to adequately refute any of these bases for dismissal and instead re-hashes the same legal conclusions and threadbare allegations in his TAC. *See generally* Opp. (Dkt. 176). Notwithstanding several opportunities to cure his pleadings, it is clear that Plaintiff cannot do so, and the TAC should be dismissed without leave to amend.

II. ARGUMENT

A. Dismissal Is Appropriate Under Rule 8

Plaintiff's Opposition only underscores why the TAC should be dismissed without leave to amend—despite having his prior complaints dismissed for failure to comply with Federal Rule of Civil Procedure 8 (*see* Dkts. 37, 45, 145) and being given multiple chances to correct these pleading defects, Plaintiff disregards Rule 8's pleading requirements. Plaintiff's TAC continues to assert claims against dozens of defendants and remains disjointed, incomprehensible, and has no legal merit. In his Opposition, Plaintiff concedes that Rule 8 requires a "short and plain statement of the claim showing that the pleader is entitled to relief" and that Rule 8 forbids a complaint that is "so verbose, confused and redundant that its true substance, if any, is well disguised." Opp. at 11 (citing Rule 8 and *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008)).

However, Plaintiff's 54-page TAC, which contains 276 paragraphs of disjointed allegations and 128 pages of exhibits, and purports to assert claims against sixteen State Bar Defendants and nineteen other defendants associated with the Peoples School of Law ("PCL"), is the exact type of "verbose, confused and redundant" pleading prohibited by Rule 8. *See Hearns*, 530 F.3d at 1131. Additionally, Plaintiff continues to defend the TAC's shotgun pleading style full of "everyone did everything allegations" and his practice of grouping defendants together and reincorporating allegations, despite having been specifically warned by the Court that these pleading practices violate Rule 8. *See* Dkts. 132, 145.

Accordingly, the TAC should be dismissed without leave to amend because even after being given multiple opportunities to comply with Rule 8, Plaintiff has demonstrated that he cannot do so. *See Grant v. Los Angeles Cnty. Sheriff's Dep't*, 2021 WL 769854, at *3 (C.D. Cal. Jan. 11, 2021) (citations omitted) ("[A] pro se plaintiff must still follow the rules of procedure that govern all litigants in federal court, including the requirement that a complaint minimally state a short and plain statement of a claim that is plausible on its face.").

B. The State Bar Defendants Are Entitled to Eleventh Amendment Immunity as to Any Claims Asserted Against Them in Their Official Capacities

As the Court previously held, the majority of Plaintiff's claims asserted against the State Bar Defendants in their official capacity are barred by the Eleventh Amendment. *See* Dkt. 132 at 17–23. Although Plaintiff suggests in the TAC that the *Ex parte Young* exception to sovereign immunity could apply to his official capacity claims against the State Bar Defendants, as the State Bar Defendants established in their Motion, there is no question that the *Ex parte Young* exception is not available here because the relief that Plaintiff seeks is purely retrospective in nature. Mot. at 20–21 (citing cases). Plaintiff does not adequately refute these arguments in his Opposition and merely states without any explanation that his claims "may fall under the *Ex parte Young* exception." Opp. at

24. Plaintiff's assertion alone that the *Ex parte Young* exception could potentially apply is insufficient to refute the State Bar Defendants' arguments.

Accordingly, the State Bar Defendants are entitled to Eleventh Amendment immunity as to any claims asserted against them in their official capacities.

C. The TAC Should Be Dismissed Under Rule 12(b)(6)

1. Plaintiff Fails to State Any Claim for Relief Against the State Bar Defendants

The State Bar Defendants' Motion addressed why each and every cause of action against any State Bar Defendant should be dismissed pursuant to Rule 12(b)(6). Mot. at 21–32. The bases for dismissal pursuant to Rule 12(b)(6) for his federal claims include: the State Bar Defendants are entitled to qualified immunity (Mot. at 21–24); and Plaintiff fails to plead nonconclusory facts as to the required elements of his equal protection claim (Mot. at 24–25), Title VI claim (Mot. at 25–26), RICO claim (Mot. at 26–28), and Title IX claim (Mot. at 28–29). As to his state-law claims, the State Bar Defendants established that the Court should decline to exercise supplemental jurisdiction over those claims (Mot. at 29) and that they fail as a matter of law in any event, including because Plaintiff fails to adequately allege compliance with the Government Claims Act, which is fatal to his state-law claims to the extent they seek damages (Mot. at 29–31); Plaintiff cannot state an Unruh Act claim against the State Bar or its employees (Mot. at 31); Plaintiff has inadequately pled negligence and that claim is barred by various immunities (Mot. at 31–32); and Plaintiff's "conspiracy" claim fails because no such cause of action exists under California law (Mot. at 32).

Apart from addressing the State Bar Defendants' arguments regarding qualified immunity and his lack of compliance with the Government Claims Act (*see* Opp. at 8, 16–18), Plaintiff fails to respond to any of these arguments.[1] His failure to oppose these

[1] Plaintiff also asserts a vague argument that the Court should impose "supervisory liability" on the State Bar Defendants. *See* Opp. at 16. Although this argument is

grounds for dismissal is tantamount to a concession that dismissal is proper. *See Walsh v. Nev. Dep't of Human Res.*, 471 F.3d 1033, 1037 (9th Cir. 2006) ("A plaintiff who makes a claim . . . in his complaint, but fails to raise the issue in response to a defendant's motion to dismiss . . . has effectively abandoned his claim . . ."); *Jones v. Dollar Tree Stores, Inc.*, 2021 WL 6496822, at *7 (C.D. Cal. Nov. 4, 2021) ("Failure to address an argument raised in a motion to dismiss constitutes waiver of that argument."). But even as to the State Bar Defendants' arguments regarding qualified immunity and his lack of compliance with the Government Claims Act, Plaintiff provides no substantive basis for why his claims should survive. Plaintiff's failure to respond to the State Bar Defendants' arguments is even more astonishing given that Court has already noted deficiencies with these very claims. *See* Dkts. 132, 145.

First, as to qualified immunity, Plaintiff repeats the same conclusory allegations from the TAC and cites a single case from the Northern District of Oklahoma regarding prison officials' duty to protect prisoners under their supervision that has no applicability here. *See* Opp. at 16–18 (citing *Porter v. Crow*, 2020 WL 620284 (N.D. Okla. Feb. 10, 2020). Plaintiff's recitation of the same legal conclusions in his TAC and citation to *Porter* do not save his claims. As the State Bar Defendants established in their Motion, they are entitled to qualified immunity because where, as here, the constitutional rights identified by Plaintiff are framed too generally and there is no case law holding officials of a regulatory agency liable for alleged discrimination by a regulated body, the constitutional rights are not clearly established as applied to Plaintiff's claims against the State Bar Defendants. *See* Mot. at 21–24.

---

untethered to any particular claim, to the extent that Plaintiff is asserting this argument as to his equal protection claim under section 1983, as explained in the State Bar Defendants' Motion, vicarious liability is inapplicable to section 1983 suits. *See* Mot. at 24–25 (citing cases). Nor would this theory save Plaintiff's remaining claims. *See* Mot. at 19–34.

Second, as to Plaintiff's failure to adequately allege compliance with the Government Claims Act, Plaintiff repeatedly (and inexplicably) emphasizes in the Opposition that a party's failure to comply with the Government Claims Act ("GCA") is supposedly an affirmative defense that must be raised by a defendant. *See* Opp. at 8–11 (citing *Quigley v. Garden Valley Fire Prot. Dist.*, 7 Cal. 5th 798, 802 (2019)). But *Quigley* does not concern the claim presentation requirements of the GCA; rather, that case addressed whether the governmental immunities—separate provisions of the GCA—operate as an affirmative defense to liability. As for claim presentation requirements, the California Supreme Court has plainly held that "the timely filing of a written government claim is an element that a plaintiff is required to prove in order to prevail on his or her cause of action." *Willis v. City of Carlsbad*, 48 Cal. App. 5th 1104, 1119 (2020); *id.* ("a "complaint failing to allege facts demonstrating timely presentation of a claim or that such presentation was excused is subject to a general demurrer for not stating facts sufficient to constitute a cause of action"); *see also* Mot. at 30 (citing *Willis*). Accordingly, Plaintiff's affirmative defense argument fails to counter the State Bar Defendants' showing that Plaintiff is obligated to sufficiently plead compliance with the claims presentation requirement.

Additionally, although Plaintiff argues that any dispute regarding his compliance can be "fully addressed during discovery," to the extent that Plaintiff suggests his compliance with the GCA cannot or should not be decided on a motion to dismiss, he is incorrect. *See, e.g., Robinson v. Alameda Cnty.*, 875 F. Supp. 2d 1029, 1046 (N.D. Cal. 2012) (dismissing claim for failure to allege compliance); *AHCS-Mental Health & Wellness Inc. v. Los Angeles Cnty.*, 2021 WL 6495038, at *7 (C.D. Cal. Dec. 16, 2021) (same). Nor does Plaintiff adequately address the State Bar Defendants' argument that Plaintiff's allegation of filing a December 2022 government claim has never been previously asserted in any complaint and is contradicted by the State Bar's judicially noticeable records, and that his untimely August 2024 government claim belies his

allegation that he previously presented a government claim.[2] *See* Opp. at 8–11. Plaintiff's piecemeal emails do not demonstrate substantial compliance. *Id.*, Exs. 1–2. Nor does a standalone copy of Plaintiff's purported December 2022 claim, which was never received by the State Bar, establish actual receipt as required by the GCA. *Id*., Ex. 3; Mot. at 30 (citing cases requiring actual receipt and permitting judicial notice of an entity's records showing a claimant's lack of compliance).

Accordingly, the State Bar Defendants are entitled to qualified immunity as to Plaintiff's federal claims asserted against them in their individual capacities and Plaintiff's failure to adequately plead compliance with the Government Claims Act bars his state-law claims seeking monetary relief. Additionally, by failing to respond to the majority of the State Bar Defendants' arguments, Plaintiff concedes that dismissal of his claims is proper.

2. Plaintiff Misunderstands the Relevant Standard for a Motion to Dismiss

Throughout the Opposition, Plaintiff argues that he will be able to prove his claims through discovery. *See, e.g*., Opp. at 20 (arguing that the extent of the State Bar's knowledge is a factual issue that "require[s] further development through discovery"); *id.* at 22–24 (arguing that discovery is needed to determine the applicability of the Eleventh Amendment to his claims). There is, of course, no discovery that would be relevant to the Court's consideration of the State Bar Defendants' Motion to Dismiss. To the extent that Plaintiff is arguing that the State Bar Defendants' Motion should be denied based on the possibility of future discovery, Plaintiff's arguments are meritless. Courts may not "condone the use of discovery to engage in fishing expeditions" (*Webb v. Trader Joe's Co*., 999 F.3d 1196, 1204 (9th Cir. 2021), internal quotation marks and citation omitted),

[2] Plaintiff's citation to various exhibits regarding his purported compliance only underscore the ambiguity, breadth, and volume of Plaintiff's various requests from the State Bar. *See* Opp., Exhs. 1–3 (emails from Plaintiff complaining of a purported antitrust violation, seeking correction of purported errors on his law school transcript, and demanding a law degree despite not having completed all required years of study).

and to survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). As established in the Motion to Dismiss, Plaintiff's claims fail for numerous reasons, including sovereign immunity and failure to state a claim.

Accordingly, Plaintiff's arguments regarding discovery have no bearing on the State Bar Defendants' Motion and the Court should dismiss the TAC in its entirety.

D. Dismissal Is Appropriate as to Members of the Board of Trustees and CBE and Remedies That May Not Be Awarded

As explained in the State Bar Defendants' Motion, seven of the individual State Bar Defendants are not proper defendants in this action because individual members of a legislative body do not have authority to bind the Board of Trustees or the Committee of Bar Examiners.[3] *See* Mot. at 33. Nor can Plaintiff seek various remedies listed in the TAC because they may not be awarded as a matter of law. *Id*. at 33–34. Plaintiff does not adequately refute either of these arguments.

As to the improperly named individual State Bar Defendants, Plaintiff vaguely asserts that government officials can be held liable for misconduct and cites an inapposite case in which the Ninth Circuit certified the question of whether an implied private right of action exists under a provision of the Commonwealth of the Northern Mariana Islands Constitution to that jurisdiction's Supreme Court. *See* Opp. at 15–16 (citing *Peter-Palican v. Gov't of Com. of N. Mariana Islands*, 673 F.3d 1013, 1015 (9th Cir. 2012)). Plaintiff's vague argument and irrelevant citation cannot overcome the State Bar Defendants' cited authority demonstrating why Plaintiff's claims against these individuals should be dismissed.[4]

---

[3] These individuals are Brandon Stallings; Ruben Duran; Hailyn Chen; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; and Paul Kramer. TAC ¶¶ 25–27, 29–31.

[4] In the Opposition, Plaintiff argues he has standing to assert the claims in the TAC. *See* Opp. at 9, 19–20. Plaintiff appears to misunderstand the State Bar Defendants' Motion, which did not challenge Plaintiff's standing, but his failure to comply with Rule 8, failure

Nor does Plaintiff adequately address the State Bar Defendants' arguments regarding the remedies sought in the TAC. Plaintiff relies on an Eleventh Circuit case for the proposition that "a complaint is sufficient if it alleges facts that entitle the plaintiff to any relief the court can grant, regardless of whether the specific remedy requested is proper." Opp. at 25–26 (citing *A.W. by & Through J.W. v. Coweta Cnty. Sch. Dist.*, 110 F.4th 1309, 1315 (11th Cir. 2024)). Plaintiff appears to misunderstand the State Bar Defendants' arguments. Although, as *A.W.* holds, "[r]equesting an improper remedy is not fatal to a claim" (*id.* at 1315), Plaintiff may not seek remedies that may not be awarded as a matter of law, such as his request for punitive damages or injunctive relief ordering discipline of specific employees, nor can he seek penalties that are unsupported by any cause of action. *See* Mot. at 33–34. Plaintiff does not adequately refute the State Bar Defendants' arguments, and his requests for punitive damages, civil penalties under the Business and Professions Code, and order from this Court directing the State Bar to investigate and discipline specific State Bar employees should be dismissed.

Accordingly, Plaintiff's claims against these individuals and his improper remedies should be dismissed.

E. The TAC Should Be Dismissed Without Leave to Amend

When it is clear that "the complaint could not be saved by any amendment," a court may dismiss a claim with prejudice. *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002) (cleaned up). Leave need not be granted where further amendment would constitute "an exercise in futility." *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989). "The district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint." *Id.*

Here, as the State Bar Defendants demonstrated in their Motion and in their Opposition to Plaintiff's Motion for Leave to Amend (Dkt. 178), Plaintiff's claims suffer

---

to state a claim, and why dismissal is necessary of Plaintiff's official capacity claims for lack of jurisdiction, as well as dismissal of improperly named defendants and impermissible remedies. *See generally* Mot.

from numerous fatal deficiencies that cannot be cured through further amendment, and these ongoing deficiencies underscore the futility of further amendment in this case. Plaintiff appears to agree with the State Bar Defendants, as he *concedes* in the Opposition that further amendment would be futile. In Plaintiff's own words, he has "revised his complaint through several iterations," and the legal challenges raised by the defendants indicate that "further amendment beyond the changes already presented to the Court and pending decision would be futile." Opp. at 26–27. Plaintiff thus agrees that "[i]n this case, further amendment would be futile." *Id*. at 27. However, rather than permitting this case to proceed to discovery, as Plaintiff suggests, Plaintiff's claims against the State Bar Defendants should be dismissed without leave to amend.

Additionally, Plaintiff improperly asserts a new claim alleging a due process violation for the first time in his Opposition. *See* Opp. at 19–20. Plaintiff claims that he has a "vested property interest in his legal education" that "arises from the contractual relationship between Plaintiff and PCL" and that this purported property interest can serve as the basis for a due process claim against the State Bar Defendants. *Id*. These allegations were noticeably absent from the TAC. *See generally* TAC. Adding a new claim at this juncture would violate Rule 8's requirement that a complaint include a "short and plain statement of the claim showing that the pleader is entitled to relief" and constitute another Rule 8 violation. *See* Fed. R. Civ. P. 8(a)(2). And, of course, Plaintiff cannot assert a new claim for the first time in an opposition. *See Pickern v. Pier 1 Imports (U.S.), Inc*., 457 F.3d 963, 968 (9th Cir. 2006) (holding that the defendant lacked adequate notice of the plaintiff's new ADA claims raised for the first time in opposition to summary judgment). Plaintiff's new due process claim should be dismissed as improperly raised for the first time in response to the State Bar Defendants' Motion.

III. CONCLUSION

For all the foregoing reasons and those stated in the State Bar Defendants' Motion, the State Bar Defendants respectfully request that this Court grant their Motion to Dismiss without leave to amend, as any further amendment of the TAC would be futile.

Dated: October 15, 2024

Respectfully submitted,

By: /s/ *JENNIFER KO*
JENNIFER KO
Assistant General Counsel

Attorneys for Defendants
Louisa Ayrapetyan; Natalie Leonard; Leah Wilson; Brandon Stallings; Ruben Duran; Hailyn Chen; Audrey Ching; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; Paul Kramer; Jean Krasilnikoff; Ellin Davtyan; George Cardona; Devan McFarland; Enrique Zuniga

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the State Bar of California, certifies that this brief contains 3,195 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 15, 2024

Respectfully submitted,

By: /s/ *JENNIFER KO*
JENNIFER KO
Assistant General Counsel

Attorneys for Defendants
Louisa Ayrapetyan; Natalie Leonard; Leah Wilson; Brandon Stallings; Ruben Duran; Hailyn Chen; Audrey Ching; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; Paul Kramer; Jean Krasilnikoff; Ellin Davtyan; George Cardona; Devan McFarland; Enrique Zuniga

DECLARATION OF SERVICE

I, Jennifer Ko, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of Los Angeles, that my business address is The State Bar of California, 845 S. Figueroa Street, Los Angeles, CA 90017. On October 15, 2024, following ordinary business practice, I filed via the United States District Court, Central District of California electronic case filing system, the following:

STATE BAR DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT

Participants in the case who are registered CM/ECF users will be served.

See the CM/ECF service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, on October 15, 2024.

/s/ *JENNIFER KO*
Jennifer Ko